

AMENDED IN ASSEMBLY SEPTEMBER 2, 2005

AMENDED IN ASSEMBLY AUGUST 30, 2005

AMENDED IN ASSEMBLY JULY 11, 2005

AMENDED IN ASSEMBLY JUNE 13, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 231

Introduced by Senator Figueroa

February 15, 2005

An act to amend Sections 125.3, 802, 802.1, 805.2, 2001, 2020, 2027, 2220.08, 2225, 2343, and 2435 of, to add Sections 473.16, 2026, 2334, ~~2357~~, 2435.2, and 2435.3 to, to add and repeal Sections 2006 and 2358 of, and to repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of, the Business and Professions Code, to repeal Section 364.1 of the Code of Civil Procedure, and to amend Sections 11371, 11508, and 11523 of, ~~and~~ to amend, repeal, and add Sections 12529 and 12529.5 ~~of~~, *to add Section 12529.7 to, and to add and repeal Section 12529.6 of*, the Government Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Figueroa. Healing arts: Medical Board of California.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners by professional boards within the Department of Consumer Affairs. Existing law requires that specified settlements and any arbitration awards of malpractice claims or in malpractice actions against a licensee be reported to the appropriate licensing board by the licensee or claimant, or their counsel. Under

existing law, a failure to comply with this requirement is a crime punishable by specified fines.

This bill would also require any judgment in a malpractice action against a licensee to be reported to the appropriate licensing board by the licensee or the claimant, or their counsel, and would make a failure to comply with this requirement a crime. Because the bill would create a new crime, it would impose a state-mandated local program. The bill would ~~state the Legislature's intent that~~ *require, to the extent funding is available, the Little Hoover Commission to study the laws requiring public disclosure with regard to the public protection mandate of the Medical Board of California, and complete the study by December 31, 2007 July 1, 2008.*

(2) Existing law authorizes an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the licensing authority, the reasonable costs of investigating and prosecuting the case.

This bill would prohibit the Medical Board of California from requesting and obtaining reimbursement for these costs.

(3) The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the provisions creating the board and providing for the appointment of an executive director become inoperative on July 1, 2006, and are repealed on January 1, 2007.

This bill would extend these provisions to July 1, 2010, and January 1, 2011, respectively. *The bill would require the Joint Committee on Boards, Commissions, and Consumer Protection to examine the medical board's composition and its licensure fees and report its findings to the Governor and the Legislature no later than July 1, 2008.*

(4) Existing law requires a physician and surgeon to report certain matters to the medical board in writing within 30 days, including the conviction of any felony, and including any verdict of guilty, or plea of guilty or no contest. A failure to make a report is a crime.

This bill would also require a physician and surgeon to report his or her conviction of a misdemeanor that is substantially related to the qualifications, functions, or duties of a physician and surgeon. Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

(5) Existing law requires the medical board to post certain information regarding its licensees on the Internet, including whether

a licensee has been subject to discipline by the board of another state or jurisdiction.

This bill would also require the posting of prior disciplinary action taken by the board. The bill would additionally require the posting of any misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon upon the enactment of legislation defining those convictions and would direct the medical board, in consultation with specified entities, to develop a proposal for the legislation and submit it to the Legislature.

(6) Existing law requires the medical board to contract with the Institute for Medical Quality for a comprehensive study of the existing peer review process for discipline of physicians and surgeons. Under these provisions, a written report was to be submitted to the medical board and the Legislature by November 1, 2003.

This bill instead would require the medical board to contract with an independent entity for this comprehensive study, to be completed by July 31, 2007, and would state that the completion of the study is to be among the highest priorities of the medical board.

(7) Existing law generally requires complaints received by the medical board that involve quality of care to be reviewed by one or more medical experts and to meet other criteria before they are referred to a field office of the board for investigation.

This bill would exempt new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation, or who is on probation, from these referral requirements.

(8) Existing law requires a licensee of the medical board to produce documents requested by the Attorney General or investigators of the board within 15 days.

This bill would authorize the board to impose fines for noncompliance with these requirements.

(9) Existing law provides for the medical board to oversee diversion programs for physicians and surgeons with alcohol and drug abuse problems.

This bill would require the program's manager to report specified financial information to the medical board quarterly and ~~would require the Bureau of State Audits to conduct a thorough audit of the medical board's diversion programs by June 30, 2007. The bill would require the medical board to reimburse the bureau for its costs incurred in completing the audit. The bill would make the diversion program provisions inoperative on July 1, 2008, and repeal them on January 1,~~

2009, unless the Legislature deletes or extends those dates. *The bill would state the Legislature's intent that the Bureau of State Audits complete an audit of the diversion program by June 30, 2007.*

(10) Existing law provides for the medical board to fix, pursuant to a specified formula, the amount of the initial and biennial licensure fees for physicians and surgeons at a sum not to exceed \$610. Fees are deposited into the Contingent Fund of the Medical Board, which is continuously appropriated to the board. Under existing law, the medical board is required to report to the Legislature when it proposes or approves a fee increase.

This bill would delete those reporting provisions and would require the Joint Legislative Audit Committee to select an independent entity by January 1, 2007, to study and report to the Legislature before January 1, 2008, on specified financial matters regarding the medical board. The bill would delete the formula provisions that the medical board is required to apply in fixing licensure fees and would increase the initial licensure fee and the biennial renewal fee to \$790, and would direct the adjustment of those fees for discontinuance of the diversion program, ~~transfer of the board's investigative staff to the Department of Justice, and the loss of enforcement and prosecution cost reimbursements, and changes to the disciplinary proceedings.~~ The bill would also delete certain provisions requiring the board to charge various examination fees. By providing for an increase in licensure fees deposited into a continuously appropriated fund, the bill would make an appropriation.

(11) Existing law provides that an action based upon the professional negligence of a physician and surgeon or doctor of podiatric medicine may not be commenced unless a specified 90-day notice is also sent to the medical board or the Board of Podiatric Medicine at the same time it is sent to the defendant. Existing law requires each board, as applicable, to maintain the notice as a confidential part of a potential investigation file.

This bill would repeal this provision.

(12) Existing law creates within the Office of Administrative Hearings a Medical Quality Hearing Panel consisting of administrative law judges with medical training, to hear administrative law matters involving physicians and surgeons. Existing law requires decisions of this panel and associated court decisions to be published in a quarterly "Medical Discipline Report," subject to funding being appropriated by the Legislature.

This bill would delete the requirement for publishing this report. The bill would also require in matters brought by the medical board, that the parties exchange written information concerning expert witness testimony before introducing that evidence and would authorize the Office of Administrative Hearings to adopt regulations governing the exchange of this information.

(13) Existing law, under the Administrative Procedure Act, provides for administrative hearings involving certain state agencies including the medical board to be held in certain locations throughout the state based upon where a transaction occurred or whether the respondent resides with a certain district of the Court of Appeal. Under that act, an administrative hearing decision is subject to judicial review by a writ of mandate, and specified costs are assessed for preparation of the record.

This bill would require, subject to specified exceptions, that the hearing be held at the hearing facility maintained by the Office of Administrative Hearings that is closest to the location where the transaction occurred or the respondent resides. The bill would revise the process for assessing the cost to prepare the record of the administrative hearing for judicial review.

(14) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of prosecuting proceedings against licensees and applicants within the jurisdiction of the medical board and various other boards.

This bill would also make investigation of licensees and applicants a primary responsibility of the Health Quality Enforcement Section. ~~The bill would transfer employees of the medical board who perform investigations and their staff to the Department of Justice. The bill would provide them upon transfer, the same status as employees of the Department of Justice and for those who perform investigations, would include peace officer status.~~ The bill would require that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. The bill would make these provisions inoperative on July 1, 2008, and would repeal them on January 1, 2009, unless a later enacted statute deletes or extends those dates. *The bill would also, effective January 1, 2006, simultaneously assign a complaint received by the medical board, to an investigator and a deputy attorney general in the Health Quality Enforcement Section. The bill would make this provision inoperative on July 1, 2008, and would repeal it on January*

1, 2009, unless a later enacted statute deletes or extends those dates. The bill would require the medical board, in consultation with specified agencies, to report, by July 1, 2007, to the Governor and the Legislature on this prosecution model.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature, through a
2 request in 2006 to the Joint Legislative Audit Committee, that the
3 Bureau of State Audits conduct a thorough performance audit of
4 the diversion program of the Medical Board of California to
5 evaluate the effectiveness and efficiency of the program, and
6 make recommendations regarding the continuation of the
7 program and any changes or reforms required to assure that
8 physicians and surgeons participating in the program are
9 appropriately monitored, and the public is protected from
10 physicians and surgeons who are impaired due to alcohol or
11 drug abuse or mental or physical illness. The audit shall be
12 completed by June 30, 2007. The board and its staff shall
13 cooperate with the audit, and the Medical Board of California
14 shall provide data, information, and case files as requested by
15 the auditor to perform all of its duties. The provision of
16 confidential data, information, and case files by the Medical
17 Board of California to the auditor shall not constitute a waiver of
18 any exemption from disclosure or discovery or of any
19 confidentiality protection or privilege otherwise provided by law
20 that is applicable to the data, information, or case files.

21 ~~SECTION 1.~~

22 SEC. 2. Section 125.3 of the Business and Professions Code,
23 is amended to read:

24 125.3. (a) Except as otherwise provided by law, in any order
25 issued in resolution of a disciplinary proceeding before any board

1 within the department or before the Osteopathic Medical Board,
2 upon request of the entity bringing the proceeding may request
3 the administrative law judge to direct a licentiate found to have
4 committed a violation or violations of the licensing act to pay a
5 sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case.

7 (b) In the case of a disciplined licentiate that is a corporation
8 or a partnership, the order may be made against the licensed
9 corporate entity or licensed partnership.

10 (c) A certified copy of the actual costs, or a good faith
11 estimate of costs where actual costs are not available, signed by
12 the entity bringing the proceeding or its designated representative
13 shall be prima facie evidence of reasonable costs of investigation
14 and prosecution of the case. The costs shall include the amount
15 of investigative and enforcement costs up to the date of the
16 hearing, including, but not limited to, charges imposed by the
17 Attorney General.

18 (d) The administrative law judge shall make a proposed
19 finding of the amount of reasonable costs of investigation and
20 prosecution of the case when requested pursuant to subdivision
21 (a). The finding of the administrative law judge with regard to
22 costs shall not be reviewable by the board to increase the cost
23 award. The board may reduce or eliminate the cost award, or
24 remand to the administrative law judge where the proposed
25 decision fails to make a finding on costs requested pursuant to
26 subdivision (a).

27 (e) Where an order for recovery of costs is made and timely
28 payment is not made as directed in the board's decision, the
29 board may enforce the order for repayment in any appropriate
30 court. This right of enforcement shall be in addition to any other
31 rights the board may have as to any licentiate to pay costs.

32 (f) In any action for recovery of costs, proof of the board's
33 decision shall be conclusive proof of the validity of the order of
34 payment and the terms for payment.

35 (g) (1) Except as provided in paragraph (2), the board shall
36 not renew or reinstate the license of any licentiate who has failed
37 to pay all of the costs ordered under this section.

38 (2) Notwithstanding paragraph (1), the board may, in its
39 discretion, conditionally renew or reinstate for a maximum of
40 one year the license of any licentiate who demonstrates financial

1 hardship and who enters into a formal agreement with the board
2 to reimburse the board within that one-year period for the unpaid
3 costs.

4 (h) All costs recovered under this section shall be considered a
5 reimbursement for costs incurred and shall be deposited in the
6 fund of the board recovering the costs to be available upon
7 appropriation by the Legislature.

8 (i) Nothing in this section shall preclude a board from
9 including the recovery of the costs of investigation and
10 enforcement of a case in any stipulated settlement.

11 (j) This section does not apply to any board if a specific
12 statutory provision in that board's licensing act provides for
13 recovery of costs in an administrative disciplinary proceeding.

14 (k) Notwithstanding the provisions of this section, the Medical
15 Board of California shall not request nor obtain from a licentiate,
16 investigation and prosecution costs for a disciplinary proceeding
17 against the licentiate. The board shall ensure that this subdivision
18 is revenue neutral with regard to it and that any loss of revenue or
19 increase in costs resulting from this subdivision is offset by an
20 increase in the amount of the initial license fee and the biennial
21 renewal fee, as provided in subdivision (e) of Section 2435.

22 *SEC. 3. Section 473.16 is added to the Business and*
23 *Professions Code, to read:*

24 *473.16. The Joint Committee on Boards, Commissions, and*
25 *Consumer Protection shall examine the composition of the*
26 *Medical Board of California and its initial and biennial fees and*
27 *report to the Governor and the Legislature its findings no later*
28 *than July 1, 2008.*

29 ~~SEC. 2.~~

30 *SEC. 4. Section 802 of the Business and Professions Code is*
31 *amended to read:*

32 802. (a) Every settlement, judgment, or arbitration award
33 over three thousand dollars (\$3,000) of a claim or action for
34 damages for death or personal injury caused by negligence, error
35 or omission in practice, or by the unauthorized rendering of
36 professional services, by a person who holds a license,
37 certificate, or other similar authority from an agency mentioned
38 in subdivision (a) of Section 800 (except a person licensed
39 pursuant to Chapter 3 (commencing with Section 1200) or
40 Chapter 5 (commencing with Section 2000) of Division 2) or the

1 Osteopathic Initiative Act who does not possess professional
2 liability insurance as to that claim shall, within 30 days after the
3 written settlement agreement has been reduced to writing and
4 signed by all the parties thereto or 30 days after service of the
5 judgment or arbitration award on the parties, be reported to the
6 agency that issued the license, certificate, or similar authority. A
7 complete report shall be made by appropriate means by the
8 person or his or her counsel, with a copy of the communication to
9 be sent to the claimant through his or her counsel if the person is
10 so represented, or directly if he or she is not. If, within 45 days of
11 the conclusion of the written settlement agreement or service of
12 the judgment or arbitration award on the parties, counsel for the
13 claimant (or if the claimant is not represented by counsel, the
14 claimant himself or herself) has not received a copy of the report,
15 he or she shall himself or herself make the complete report.
16 Failure of the licensee or claimant (or, if represented by counsel,
17 their counsel) to comply with this section is a public offense
18 punishable by a fine of not less than fifty dollars (\$50) or more
19 than five hundred dollars (\$500). Knowing and intentional failure
20 to comply with this section or conspiracy or collusion not to
21 comply with this section, or to hinder or impede any other person
22 in the compliance, is a public offense punishable by a fine of not
23 less than five thousand dollars (\$5,000) nor more than fifty
24 thousand dollars (\$50,000).

25 (b) Every settlement over thirty thousand dollars (\$30,000), or
26 judgment or arbitration award of any amount, of a claim or action
27 for damages for death or personal injury caused by negligence,
28 error or omission in practice, or by the unauthorized rendering of
29 professional services, by a physician and surgeon licensed
30 pursuant to Chapter 5 (commencing with Section 2000) of
31 Division 2, or the Osteopathic Initiative Act, who does not
32 possess professional liability insurance as to the claim shall,
33 within 30 days after the written settlement agreement has been
34 reduced to writing and signed by all the parties thereto or 30 days
35 after service of the judgment or arbitration award on the parties,
36 be reported to the agency that issued the license, certificate, or
37 similar authority. A settlement over thirty thousand dollars
38 (\$30,000) shall also be reported if the settlement is based on the
39 licensee's negligence, error, or omission in practice or his or her
40 rendering of unauthorized professional services, and a party to

1 the settlement is a corporation, medical group, partnership, or
2 other corporate entity in which the licensee has an ownership
3 interest or that employs or contracts with the licensee. A
4 complete report including the name and license number of the
5 physician and surgeon shall be made by appropriate means by the
6 person or his or her counsel, with a copy of the communication to
7 be sent to the claimant through his or her counsel if he or she is
8 so represented, or directly if he or she is not. If, within 45 days of
9 the conclusion of the written settlement agreement or service of
10 the judgment or arbitration award on the parties, counsel for the
11 claimant (or if the claimant is not represented by counsel, the
12 claimant himself or herself) has not received a copy of the report,
13 he or she shall himself or herself make the complete report.
14 Failure of the physician and surgeon or claimant (or, if
15 represented by counsel, their counsel) to comply with this section
16 is a public offense punishable by a fine of not less than fifty
17 dollars (\$50) nor more than five hundred dollars (\$500).
18 Knowing and intentional failure to comply with this section or
19 conspiracy or collusion not to comply with this section, or to
20 hinder or impede any other person in the compliance, is a public
21 offense punishable by a fine of not less than five thousand dollars
22 (\$5,000) nor more than fifty thousand dollars (\$50,000).

23 (c) Every settlement, judgment, or arbitration award over ten
24 thousand dollars (\$10,000) of a claim or action for damages for
25 death or personal injury caused by negligence, error, or omission
26 in practice, or by the unauthorized rendering of professional
27 services, by a marriage and family therapist or clinical social
28 worker licensed pursuant to Chapter 13 (commencing with
29 Section 4980) or Chapter 14 (commencing with Section 4990)
30 who does not possess professional liability insurance as to that
31 claim shall within 30 days after the written settlement agreement
32 has been reduced to writing and signed by all the parties thereto
33 or 30 days after service of the judgment or arbitration award on
34 the parties be reported to the agency that issued the license,
35 certificate, or similar authority. A complete report shall be made
36 by appropriate means by the person or his or her counsel, with a
37 copy of the communication to be sent to the claimant through his
38 or her counsel if he or she is so represented, or directly if he or
39 she is not. If, within 45 days of the conclusion of the written
40 settlement agreement or service of the judgment or arbitration

award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

~~SEC. 3.~~

SEC. 5. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) A physician and surgeon shall report either of the following to the Medical Board of California in writing within 30 days:

(1) The bringing of an indictment or information charging a felony against the physician and surgeon.

(2) The conviction of the physician and surgeon, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. A physician and surgeon shall report only those misdemeanors that are substantially related to the qualifications, functions, or duties of a physician and surgeon defined or identified by the Legislature pursuant to subdivision (d) of Section 2027.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

~~SEC. 4.~~

SEC. 6. Section 805.2 of the Business and Professions Code is amended to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California.

1 (b) The Medical Board of California shall contract with an
2 independent entity to conduct this study that is fair, objective,
3 and free from bias that is directly familiar with the peer review
4 process and does not advocate regularly before the board on peer
5 review matters or on physician and surgeon disciplinary matters.

6 (c) The study by the independent entity shall include, but not
7 be limited to, the following components:

8 (1) A comprehensive description of the various steps of and
9 decisionmakers in the peer review process as it is conducted by
10 peer review bodies throughout the state, including the role of
11 other related committees of acute care health facilities and clinics
12 involved in the peer review process.

13 (2) A survey of peer review cases to determine the incidence
14 of peer review by peer review bodies, and whether they are
15 complying with the reporting requirement in Section 805.

16 (3) A description and evaluation of the roles and performance
17 of various state agencies, including the State Department of
18 Health Services and occupational licensing agencies that regulate
19 healing arts professionals, in receiving, reviewing, investigating,
20 and disclosing peer review actions, and in sanctioning peer
21 review bodies for failure to comply with Section 805.

22 (4) An assessment of the cost of peer review to licentiates and
23 the facilities which employ them.

24 (5) An assessment of the time consumed by the average peer
25 review proceeding, including the hearing provided pursuant to
26 Section 809.2, and a description of any difficulties encountered
27 by either licentiates or facilities in assembling peer review bodies
28 or panels to participate in peer review decisionmaking.

29 (6) An assessment of the need to amend Section 805 and
30 Sections 809 to 809.8, inclusive, to ensure that they continue to
31 be relevant to the actual conduct of peer review as described in
32 paragraph (1), and to evaluate whether the current reporting
33 requirement is yielding timely and accurate information to aid
34 licensing boards in their responsibility to regulate and discipline
35 healing arts practitioners when necessary, and to assure that peer
36 review bodies function in the best interest of patient care.

37 (7) Recommendations of additional mechanisms to stimulate
38 the appropriate reporting of peer review actions under Section
39 805.

1 (8) Recommendations regarding the Section 809 hearing
2 process to improve its overall effectiveness and efficiency.

3 (9) An assessment of the role of medical professionals, using
4 professionals who are experts and are actively practicing
5 medicine in this state, to review and investigate for the protection
6 of consumers, allegations of substandard practice or professional
7 misconduct.

8 (10) An assessment of the process to identify and retain a
9 medical professional with sufficient expertise to review
10 allegations of substandard practice or professional misconduct by
11 a physician and surgeon, if the peer review process is
12 discontinued.

13 (d) The independent entity shall exercise no authority over the
14 peer review processes of peer review bodies. However, peer
15 review bodies, health care facilities, health care clinics, and
16 health care service plans shall cooperate with the independent
17 entity and provide data, information, and case files as requested
18 in the timeframes specified by the independent entity.

19 (e) The independent entity shall work in cooperation with and
20 under the general oversight of the Executive Director of the
21 Medical Board of California and shall submit a written report
22 with its findings and recommendations to the board and the
23 Legislature no later than July 31, 2007.

24 (f) Completion of the peer review study pursuant to this
25 section shall be among the highest priorities of the Medical
26 Board of California, and the board shall ensure that it is
27 completed no later than July 31, 2007.

28 ~~SEC. 5.~~

29 *SEC. 7.* Section 2001 of the Business and Professions Code is
30 amended to read:

31 2001. There is in the Department of Consumer Affairs a
32 Medical Board of California that consists of 21 members, nine of
33 whom shall be public members.

34 The Governor shall appoint 19 members to the board, subject
35 to confirmation by the Senate, seven of whom shall be public
36 members. The Senate Rules Committee and the Speaker of the
37 Assembly shall each appoint a public member, and their initial
38 appointment shall be made to fill, respectively, the first and
39 second public member vacancies that occur on or after January 1,
40 1983.

1 This section shall become inoperative on July 1, 2010, and, as
2 of January 1, 2011, is repealed, unless a later enacted statute,
3 which becomes effective on or before January 1, 2011, deletes or
4 extends the dates on which it becomes inoperative and is
5 repealed. The repeal of this section renders the board subject to
6 the review required by Division 1.2 (commencing with Section
7 473).

8 ~~SEC. 6.~~

9 *SEC. 8.* Section 2006 is added to the Business and
10 Professions Code, to read:

11 2006. (a) On and after January 1, 2006, any reference in this
12 chapter to an investigation by the board, or one of its divisions,
13 shall be deemed to refer to an investigation conducted by
14 employees of the Department of Justice.

15 (b) This section shall become inoperative on July 1, 2008, and
16 as of January 1, 2009, is repealed, unless a later enacted statute,
17 that becomes operative on or before January 1, 2009, deletes or
18 extends the dates on which it becomes inoperative and is
19 repealed.

20 ~~SEC. 7.~~

21 *SEC. 9.* Section 2020 of the Business and Professions Code is
22 amended to read:

23 2020. The board may employ an executive director exempt
24 from the provisions of the Civil Service Act and may also
25 employ investigators, legal counsel, medical consultants, and
26 other assistance as it may deem necessary to carry into effect this
27 chapter. The board may fix the compensation to be paid for
28 services subject to the provisions of applicable state laws and
29 regulations and may incur other expenses as it may deem
30 necessary. Investigators employed by the board shall be provided
31 special training in investigating medical practice activities.

32 The Attorney General shall act as legal counsel for the board
33 for any judicial and administrative proceedings and his or her
34 services shall be a charge against it.

35 This section shall become inoperative on July 1, 2010, and, as of
36 January 1, 2011, is repealed, unless a later enacted statute, which
37 becomes effective on or before January 1, 2011, deletes or
38 extends the dates on which it becomes inoperative and is
39 repealed.

1 ~~SEC. 8.~~

2 ~~SEC. 10.~~ Section 2026 is added to the Business and
3 Professions Code, to read:

4 ~~2026. It is the intent of the Legislature that the Little Hoover~~
5 ~~Commission~~

6 ~~2026. To the extent funds are available to reimburse the Little~~
7 ~~Hoover Commission, that commission shall study and make~~
8 ~~recommendations on the role of public disclosure in the public~~
9 ~~protection mandate of the board and on any other disclosure~~
10 ~~issues related to patient safety specifically and on the public~~
11 ~~protection mission of the board the board.~~ This study shall
12 include, but not be limited to, whether the public is adequately
13 informed about physician misconduct by the current laws and
14 regulations providing for disclosure. This study shall be
15 commenced as soon as possible and completed no later ~~than~~
16 ~~December 31, 2007; than July 1, 2008.~~

17 ~~SEC. 9.~~

18 ~~SEC. 11.~~ Section 2027 of the Business and Professions Code
19 is amended to read:

20 2027. (a) On or after July 1, 2001, the board shall post on the
21 Internet the following information in its possession, custody, or
22 control regarding licensed physicians and surgeons:

23 (1) With regard to the status of the license, whether or not the
24 licensee is in good standing, subject to a temporary restraining
25 order (TRO), subject to an interim suspension order (ISO), or
26 subject to any of the enforcement actions set forth in Section
27 803.1.

28 (2) With regard to prior discipline, whether or not the licensee
29 has been subject to discipline by the board or by the board of
30 another state or jurisdiction, as described in Section 803.1.

31 (3) Any felony convictions reported to the board after January
32 3, 1991.

33 (4) All current accusations filed by the Attorney General,
34 including those accusations that are on appeal. For purposes of
35 this paragraph, "current accusation" shall mean an accusation
36 that has not been dismissed, withdrawn, or settled, and has not
37 been finally decided upon by an administrative law judge and the
38 Medical Board of California unless an appeal of that decision is
39 pending.

1 (5) Any malpractice judgment or arbitration award reported to
2 the board after January 1, 1993.

3 (6) Any hospital disciplinary actions that resulted in the
4 termination or revocation of a licensee's hospital staff privileges
5 for a medical disciplinary cause or reason.

6 (7) Any misdemeanor conviction that is substantially related to
7 the qualifications, functions, or duties of a physician and
8 surgeon.

9 (8) Appropriate disclaimers and explanatory statements to
10 accompany the above information, including an explanation of
11 what types of information are not disclosed. These disclaimers
12 and statements shall be developed by the board and shall be
13 adopted by regulation.

14 (9) Any information required to be disclosed pursuant to
15 Section 803.1.

16 (b) (1) From January 1, 2003, the information described in
17 paragraphs (1) (other than whether or not the licensee is in good
18 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain
19 posted for a period of 10 years from the date the board obtains
20 possession, custody, or control of the information, and after the
21 end of that period shall be removed from being posted on the
22 board's Internet Web site. Information in the possession, custody,
23 or control of the board prior to January 1, 2003, shall be posted
24 for a period of 10 years from January 1, 2003. Settlement
25 information shall be posted as described in paragraph (2) of
26 subdivision (b) of Section 803.1.

27 (2) The information described in paragraphs (3) and (6) of
28 subdivision (a) shall not be removed from being posted on the
29 board's Internet Web site. Notwithstanding the provisions of this
30 paragraph, if a licensee's hospital staff privileges are restored and
31 the licensee notifies the board of the restoration, the information
32 pertaining to the termination or revocation of those privileges, as
33 described in paragraph (6) of subdivision (a), shall remain posted
34 for a period of 10 years from the restoration date of the
35 privileges, and at the end of that period shall be removed from
36 being posted on the board's Internet Web site.

37 (c) The board shall provide links to other Web sites on the
38 Internet that provide information on board certifications that
39 meet the requirements of subdivision (b) of Section 651. The
40 board may provide links to other Web sites on the Internet that

1 provide information on health care service plans, health insurers,
2 hospitals, or other facilities. The board may also provide links to
3 any other sites that would provide information on the affiliations
4 of licensed physicians and surgeons.

5 (d) The disclosure requirement imposed by paragraph (7) of
6 subdivision (a) shall not become operative unless and until the
7 Legislature enacts legislation that defines or identifies those
8 misdemeanor convictions that are substantially related to the
9 qualifications, functions, or duties of a physician and surgeon.
10 The board shall develop a proposal, in consultation with
11 consumer groups, patient advocacy groups, the Attorney General,
12 and the medical profession, for that legislation and submit it to
13 the Legislature.

14 ~~SEC. 10.~~

15 *SEC. 12.* Section 2220.08 of the Business and Professions
16 Code is amended to read:

17 2220.08. (a) Except for reports received by the board
18 pursuant to Section 805 that may be treated as complaints by the
19 board and new complaints relating to a physician and surgeon
20 who is the subject of a pending accusation or investigation or
21 who is on probation, any complaint determined to involve quality
22 of care, before referral to a field office for further investigation,
23 shall meet the following criteria:

24 (1) It shall be reviewed by one or more medical experts with
25 the pertinent education, training, and expertise to evaluate the
26 specific standard of care issues raised by the complaint to
27 determine if further field investigation is required.

28 (2) It shall include the review of the following, which shall be
29 requested by the board:

30 (A) Relevant patient records.

31 (B) The statement or explanation of the care and treatment
32 provided by the physician and surgeon.

33 (C) Any additional expert testimony or literature provided by
34 the physician and surgeon.

35 (D) Any additional facts or information requested by the
36 medical expert reviewers that may assist them in determining
37 whether the care rendered constitutes a departure from the
38 standard of care.

39 (b) If the board does not receive the information requested
40 pursuant to paragraph (2) of subdivision (a) within 10 working

1 days of requesting that information, the complaint may be
2 reviewed by the medical experts and referred to a field office for
3 investigation without the information.

4 (c) Nothing in this section shall impede the board's ability to
5 seek and obtain an interim suspension order or other emergency
6 relief.

7 ~~SEC. 11.~~

8 *SEC. 13.* Section 2225 of the Business and Professions Code
9 is amended to read:

10 2225. (a) Notwithstanding Section 2263 and any other
11 provision of law making a communication between a physician
12 and surgeon or a podiatrist and his or her patients a privileged
13 communication, those provisions shall not apply to investigations
14 or proceedings conducted under this chapter. Members of the
15 board, the Senior Assistant Attorney General of the Health
16 Quality Enforcement Section, members of the California Board
17 of Podiatric Medicine, and deputies, employees, agents, and
18 representatives of the board or the Board of Podiatric Medicine
19 and the Senior Assistant Attorney General of the Health Quality
20 Enforcement Section shall keep in confidence during the course
21 of investigations, the names of any patients whose records are
22 reviewed and may not disclose or reveal those names, except as
23 is necessary during the course of an investigation, unless and
24 until proceedings are instituted. The authority of the board or the
25 Board of Podiatric Medicine and the Health Quality Enforcement
26 Section to examine records of patients in the office of a physician
27 and surgeon or a podiatrist is limited to records of patients who
28 have complained to the board or the Board of Podiatric Medicine
29 about that licensee.

30 (b) Notwithstanding any other provision of law, the Attorney
31 General and his or her investigative agents, and investigators and
32 representatives of the board or the Board of Podiatric Medicine,
33 may inquire into any alleged violation of the Medical Practice
34 Act or any other federal or state law, regulation, or rule relevant
35 to the practice of medicine or podiatric medicine, whichever is
36 applicable, and may inspect documents relevant to those
37 investigations in accordance with the following procedures:

38 (1) Any document relevant to an investigation may be
39 inspected, and copies may be obtained, where patient consent is
40 given.

1 (2) Any document relevant to the business operations of a
2 licensee, and not involving medical records attributable to
3 identifiable patients, may be inspected and copied where relevant
4 to an investigation of a licensee.

5 (c) In all cases where documents are inspected or copies of
6 those documents are received, their acquisition or review shall be
7 arranged so as not to unnecessarily disrupt the medical and
8 business operations of the licensee or of the facility where the
9 records are kept or used.

10 (d) Where documents are lawfully requested from licensees in
11 accordance with this section by the Attorney General or his or
12 her agents or deputies, or investigators of the board or the Board
13 of Podiatric Medicine, they shall be provided within 15 business
14 days of receipt of the request, unless the licensee is unable to
15 provide the documents within this time period for good cause,
16 including, but not limited to, physical inability to access the
17 records in the time allowed due to illness or travel. Failure to
18 produce requested documents or copies thereof, after being
19 informed of the required deadline, shall constitute unprofessional
20 conduct. The board may use its authority to cite and fine a
21 physician and surgeon for any violation of this section. This
22 remedy is in addition to any other authority of the board to
23 sanction a licensee for a delay in producing requested records.

24 (e) Searches conducted of the office or medical facility of any
25 licensee shall not interfere with the recordkeeping format or
26 preservation needs of any licensee necessary for the lawful care
27 of patients.

28 ~~SEC. 12.~~

29 *SEC. 14.* Section 2334 is added to the Business and
30 Professions Code, to read:

31 2334. (a) Notwithstanding any other provision of law, with
32 respect to the use of expert testimony in matters brought by the
33 Medical Board of California, no expert testimony shall be
34 permitted by any party unless the following information is
35 exchanged in written form with counsel for the other party, as
36 ordered by the Office of Administrative Hearings:

37 (1) A curriculum vitae setting forth the qualifications of the
38 expert.

1 (2) A brief narrative statement of the general substance of the
2 testimony that the expert is expected to give, including any
3 opinion testimony and its basis.

4 (3) A representation that the expert has agreed to testify at the
5 hearing.

6 (4) A statement of the expert's hourly and daily fee for
7 providing testimony and for consulting with the party who
8 retained his or her services.

9 (b) The exchange of the information described in subdivision
10 (a) shall be completed at least 30 calendar days prior to the
11 commencement date of the hearing.

12 (c) The Office of Administrative Hearings may adopt
13 regulations governing the required exchange of the information
14 described in this section.

15 ~~SEC. 13.~~

16 *SEC. 15.* Section 2343 of the Business and Professions Code
17 is amended to read:

18 2343. (a) Each member of a committee shall receive per
19 diem and expenses as provided in Section 103.

20 (b) The program manager shall account for all expenses and
21 revenues of the diversion program and separately report this
22 information to the board on a quarterly basis.

23 ~~SEC. 14. Section 2357 is added to the Business and~~
24 ~~Professions Code, to read:~~

25 ~~2357. (a) The Bureau of State Audits shall conduct a~~
26 ~~thorough performance audit of the board's diversion program to~~
27 ~~evaluate the effectiveness and efficiency of the program, and~~
28 ~~make recommendations regarding the continuation of the~~
29 ~~program and any changes or reforms required to assure that~~
30 ~~physicians and surgeons participating in the program are~~
31 ~~appropriately monitored, and the public is protected from~~
32 ~~physicians and surgeons who are impaired due to alcohol or drug~~
33 ~~abuse or mental or physical illness. The audit shall review the~~
34 ~~timeliness of diversion services provided by the program, the~~
35 ~~thoroughness of documentation of treatment services and~~
36 ~~aftercare services received by participants, and the thoroughness~~
37 ~~of documentation of the effectiveness of the treatment and~~
38 ~~aftercare services received by the participants. In determining the~~
39 ~~effectiveness and efficiency of the program, the audit shall~~
40 ~~evaluate the program's approval process for vendors that provide~~

~~diversion services, the program's disapproval of vendors that fail to provide effective or timely diversion services, and the program's failure to notify medical groups or hospitals when a physician and surgeon fails a diversion program. The audit shall also recommend whether the diversion program should be more closely monitored by the department, including whether the board should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation for the approval and disapproval of vendors that provide diversion services. The audit shall be completed by June 30, 2007.~~

~~(b) The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.~~

~~(c) The board shall reimburse the Bureau of State Audits for all costs it incurs as a result of this section.~~

~~SEC. 15.~~

SEC. 16. Section 2358 is added to the Business and Professions Code, to read:

2358. This article shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 16.~~

SEC. 17. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to the licensure of physicians and surgeons:

(a) Each applicant for a certificate based upon a national board diplomate certificate, each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) The application and processing fee shall be fixed by the Division of Licensing by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any. The initial license fee shall be seven hundred ninety dollars (\$790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be seven hundred ninety dollars (\$790).

(e) Notwithstanding subdivisions (c) and (d) and to ensure that subdivision (k) of Section 125.3 is revenue neutral with regard to the board, the board may, by regulation, increase the amount of the initial license fee and the biennial renewal fee by an amount required to recover both of the following:

(1) The average amount received by the board during the three fiscal years immediately preceding July 1, 2006, as reimbursement for the reasonable costs of investigation and enforcement proceedings pursuant to Section 125.3.

(2) Any increase in the amount of investigation and enforcement costs incurred by the board after January 1, 2006, that exceeds the average costs expended for investigation and enforcement costs during the three fiscal years immediately preceding July 1, 2006. When calculating the amount of costs for services for which the board paid an hourly rate, the board shall use the average number of hours for which the board paid for those costs over these prior three fiscal years, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. Beginning January 1, 2009, the board shall instead use the average number of hours for which it paid for those costs over the three year period of fiscal years 2005-06, 2006-07, and 2007-08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include

1 probation monitoring costs and disciplinary costs, including
2 those associated with the citation and fine process and those
3 required to implement subdivision (b) of Section 12529 of the
4 Government Code.

5 (f) Notwithstanding Section 163.5, the delinquency fee shall
6 be 10 percent of the biennial renewal fee.

7 (g) The duplicate certificate and endorsement fees shall each
8 be fifty dollars (\$50), and the certification and letter of good
9 standing fees shall each be ten dollars (\$10).

10 (h) It is the intent of the Legislature that, in setting fees
11 pursuant to this section, the board shall maintain a reserve in the
12 Contingent Fund of the Medical Board of California equal to
13 approximately two months' operating expenditures.

14 (i) Not later than January 1, 2007, the Joint Legislative Audit
15 Committee shall select an independent entity that is fair,
16 objective, and free from bias and that does not regularly advocate
17 before the board on licensure fee or on physician and surgeon
18 disciplinary matters, to conduct a review of the board's financial
19 status, its financial projections and historical projections,
20 including, but not limited to, its projections related to expenses,
21 revenues, and reserves. The independent entity shall, on the basis
22 of the review, report to the Joint Legislative Audit Committee
23 before January 1, 2008, on any adjustment to the amount of the
24 licensure fee that is required to maintain the reserve amount in
25 the Contingent Fund of the Medical Board of California pursuant
26 to subdivision (h) of Section 2435, and whether a refund of any
27 excess revenue should be made to licentiates.

28 ~~SEC. 17.~~

29 *SEC. 18.* Section 2435.2 is added to the Business and
30 Professions Code, to read:

31 2435.2. (a) Notwithstanding any other provision of law, if
32 Article 14 (commencing with Section 2340) becomes inoperative
33 or the diversion program described in that article is discontinued,
34 the board shall reduce the amount of the following fees:

35 (1) The initial license fee, as described in subdivision (c) of
36 Section 2435.

37 (2) The biennial renewal fee, as described in subdivision (d) of
38 Section 2435.

39 (3) An increase in the fees established pursuant to subdivision
40 (e) of Section 2435.

(b) The amount of the reductions made pursuant to subdivision (a) shall equal the board's cost of operating the diversion program.

(c) The board shall not make the reductions described in subdivision (a) if a diversion program is established by statute and requires the board to fund it in whole or in part from licensure fees.

~~SEC. 18:~~

SEC. 19. Section 2435.3 is added to the Business and Professions Code, to read:

2435.3. Notwithstanding any other provision of law, ~~if subdivision (b) of Section 12529 of the Government Code, transferring employees from the board to the Department of Justice, Section 12529.6 of the Government Code~~ remains operative on or after July 1, 2008, and is not repealed, the board may, by regulation, beginning January 1, 2009, increase the amount of the initial licensure fee and the biennial licensure renewal fee by a maximum of twenty dollars (\$20) each, if an increase is required for the cost of transferring those employees.

~~SEC. 19:~~

SEC. 20. Section 364.1 of the Code of Civil Procedure is repealed.

~~SEC. 20:~~

SEC. 21. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the

1 Office of Administrative Hearings. When the medically related
2 case workload exceeds the capacity of the members of the panel,
3 additional judges shall be requested to be added to the panels as
4 appropriate. When this workload overflow occurs on a temporary
5 basis, the Director of the Office of Administrative Hearings shall
6 supply judges from the Office of Administrative Hearings to
7 adjudicate the cases.

8 (c) The administrative law judges of the panel shall have
9 panels of experts available. The panels of experts shall be
10 appointed by the Director of the Office of Administrative
11 Hearings, with the advice of the Medical Board of California.
12 These panels of experts may be called as witnesses by the
13 administrative law judges of the panel to testify on the record
14 about any matter relevant to a proceeding and subject to
15 cross-examination by all parties, and Section 11430.30 does not
16 apply in a proceeding under this section. The administrative law
17 judge may award reasonable expert witness fees to any person or
18 persons serving on a panel of experts, which shall be paid from
19 the Contingent Fund of the Medical Board of California upon
20 appropriation by the Legislature.

21 ~~SEC. 21.~~

22 *SEC. 22.* Section 11508 of the Government Code is amended
23 to read:

24 11508. (a) The agency shall consult the office, and subject to
25 the availability of its staff, shall determine the time and place of
26 the hearing. The hearing shall be held at a hearing facility
27 maintained by the office in Sacramento, Oakland, Los Angeles,
28 or San Diego and shall be held at the facility that is closest to the
29 location where the transaction occurred or the respondent resides.

30 (b) Notwithstanding subdivision (a), the hearing may be held
31 at either of the following places:

32 (1) A place selected by the agency that is closer to the location
33 where the transaction occurred or the respondent resides.

34 (2) A place within the state selected by agreement of the
35 parties.

36 (c) The respondent may move for, and the administrative law
37 judge has discretion to grant or deny, a change in the place of the
38 hearing. A motion for a change in the place of the hearing shall
39 be made within 10 days after service of the notice of hearing on
40 the respondent.

1 Unless good cause is identified in writing by the administrative
2 law judge, hearings shall be held in a facility maintained by the
3 office.

4 ~~SEC. 22.~~

5 *SEC. 23.* Section 11523 of the Government Code is amended
6 to read:

7 11523. Judicial review may be had by filing a petition for a
8 writ of mandate in accordance with the provisions of the Code of
9 Civil Procedure, subject, however, to the statutes relating to the
10 particular agency. Except as otherwise provided in this section,
11 the petition shall be filed within 30 days after the last day on
12 which reconsideration can be ordered. The right to petition shall
13 not be affected by the failure to seek reconsideration before the
14 agency. On request of the petitioner for a record of the
15 proceedings, the complete record of the proceedings, or the parts
16 thereof as are designated by the petitioner in the request, shall be
17 prepared by the Office of Administrative Hearings or the agency
18 and shall be delivered to the petitioner, within 30 days after the
19 request, which time shall be extended for good cause shown,
20 upon the payment of the cost for the preparation of the transcript,
21 the cost for preparation of other portions of the record and for
22 certification thereof. The complete record includes the pleadings,
23 all notices and orders issued by the agency, any proposed
24 decision by an administrative law judge, the final decision, a
25 transcript of all proceedings, the exhibits admitted or rejected, the
26 written evidence and any other papers in the case. If the
27 petitioner, within 10 days after the last day on which
28 reconsideration can be ordered, requests the agency to prepare all
29 or any part of the record, the time within which a petition may be
30 filed shall be extended until 30 days after its delivery to him or
31 her. The agency may file with the court the original of any
32 document in the record in lieu of a copy thereof. If the petitioner
33 prevails in overturning the administrative decision following
34 judicial review, the agency shall reimburse the petitioner for all
35 costs of transcript preparation, compilation of the record, and
36 certification.

37 ~~SEC. 23.~~

38 *SEC. 24.* Section 12529 of the Government Code is amended
39 to read:

1 12529. (a) There is in the Department of Justice the Health
2 Quality Enforcement Section. The primary responsibility of the
3 section is to investigate and prosecute proceedings against
4 licensees and applicants within the jurisdiction of the Medical
5 Board of California including all committees under the
6 jurisdiction of the board or a division of the board, including the
7 Board of Podiatric Medicine, and the Board of Psychology.

8 ~~(b) On January 1, 2006, all persons employed by the Medical~~
9 ~~Board of California who are performing investigations and their~~
10 ~~staff shall be transferred to, and shall become employees of, the~~
11 ~~Department of Justice. The status, position, and rights of those~~
12 ~~persons shall, upon transfer, be the same as employees of the~~
13 ~~Department of Justice, and for those who are performing~~
14 ~~investigations, includes the status as a peace officer. Nothing in~~
15 ~~this section affects or diminishes the duty of the Medical Board~~
16 ~~of California to preserve the confidentiality of records as~~
17 ~~otherwise required by law. On and after January 1, 2006, any~~
18 ~~reference in this code to an investigation by the Medical Board of~~
19 ~~California, or one of its divisions, shall be deemed to refer to an~~
20 ~~investigation conducted by employees of the Department of~~
21 ~~Justice.~~

22 ~~(e)~~

23 (b) The Attorney General shall appoint a Senior Assistant
24 Attorney General of the Health Quality Enforcement Section.
25 The Senior Assistant Attorney General of the Health Quality
26 Enforcement Section shall be an attorney in good standing
27 licensed to practice in the State of California, experienced in
28 prosecutorial or administrative disciplinary proceedings and
29 competent in the management and supervision of attorneys
30 performing those functions.

31 ~~(d)~~

32 (c) The Attorney General shall ensure that the Health Quality
33 Enforcement Section is staffed with a sufficient number of
34 experienced and able employees that are capable of handling the
35 most complex and varied types of disciplinary actions against the
36 licensees of the division or board.

37 ~~(e)~~

38 (d) Funding for the Health Quality Enforcement Section shall
39 be budgeted in consultation with the Attorney General from the
40 special funds financing the operations of the Medical Board of

1 California, the California Board of Podiatric Medicine, and the
2 committees under the jurisdiction of the Medical Board of
3 California or a division of the board, and the Board of
4 Psychology, with the intent that the expenses be proportionally
5 shared as to services rendered.

6 ~~(f)~~

7 (e) This section shall become inoperative on July 1, 2008, and,
8 as of January 1, 2009, is repealed, unless a later enacted statute,
9 that becomes operative on or before January 1, 2009, deletes or
10 extends the dates on which it becomes inoperative and is
11 repealed.

12 ~~SEC. 24.~~

13 SEC. 25. Section 12529 is added to the Government Code, to
14 read:

15 12529. (a) There is in the Department of Justice the Health
16 Quality Enforcement Section. The primary responsibility of the
17 section is to prosecute proceedings against licensees and
18 applicants within the jurisdiction of the Medical Board of
19 California including all committees under the jurisdiction of the
20 board or a division of the board, including the Board of Podiatric
21 Medicine, and the Board of Psychology, and to provide ongoing
22 review of the investigative activities conducted in support of
23 those prosecutions, as provided in subdivision (b) of Section
24 12529.5.

25 (b) The Attorney General shall appoint a Senior Assistant
26 Attorney General of the Health Quality Enforcement Section.
27 The Senior Assistant Attorney General of the Health Quality
28 Enforcement Section shall be an attorney in good standing
29 licensed to practice in the State of California, experienced in
30 prosecutorial or administrative disciplinary proceedings and
31 competent in the management and supervision of attorneys
32 performing those functions.

33 (c) The Attorney General shall ensure that the Health Quality
34 Enforcement Section is staffed with a sufficient number of
35 experienced and able employees that are capable of handling the
36 most complex and varied types of disciplinary actions against the
37 licensees of the division or board.

38 (d) Funding for the Health Quality Enforcement Section shall
39 be budgeted in consultation with the Attorney General from the
40 special funds financing the operations of the Medical Board of

1 California, the California Board of Podiatric Medicine, and the
2 committees under the jurisdiction of the Medical Board of
3 California or a division of the board, and the Board of
4 Psychology, with the intent that the expenses be proportionally
5 shared as to services rendered.

6 (e) This section shall become operative July 1, 2008.

7 ~~SEC. 25.~~

8 *SEC. 26.* Section 12529.5 of the Government Code is
9 amended to read:

10 12529.5. (a) All complaints or relevant information
11 concerning licensees that are within the jurisdiction of the
12 Medical Board of California or the Board of Psychology shall be
13 made available to the Health Quality Enforcement Section.

14 (b) The Senior Assistant Attorney General of the Health
15 Quality Enforcement Section shall assign attorneys to work on
16 location at the intake unit of the boards described in subdivision
17 (d) of Section 12529 to assist in evaluating and screening
18 complaints and to assist in developing uniform standards and
19 procedures for processing complaints.

20 (c) The Senior Assistant Attorney General or his or her deputy
21 attorneys general shall assist the boards, division, or allied health
22 committees, including the Board of Podiatric Medicine, in
23 designing and providing initial and in-service training programs
24 for staff of the division, boards, or allied health committees,
25 including, but not limited to, information collection and
26 investigation.

27 (d) The determination to bring a disciplinary proceeding
28 against a licensee of the division or the boards shall be made by
29 the executive officer of the division, the board, or allied health
30 committee, including the Board of Podiatric Medicine, or the
31 Board of Psychology, as appropriate in consultation with the
32 senior assistant.

33 (e) This section shall become inoperative on July 1, 2008, and,
34 as of January 1, 2009, is repealed, unless a later enacted statute,
35 that becomes operative on or before January 1, 2009, deletes or
36 extends the dates on which it becomes inoperative and is
37 repealed.

38 ~~SEC. 26.~~

39 *SEC. 27.* Section 12529.5 is added to the Government Code,
40 to read:

1 12529.5. (a) All complaints or relevant information
2 concerning licensees that are within the jurisdiction of the
3 Medical Board of California or the Board of Psychology shall be
4 made available to the Health Quality Enforcement Section.

5 (b) The Senior Assistant Attorney General of the Health
6 Quality Enforcement Section shall assign attorneys to assist the
7 division and the boards in intake and investigations and to direct
8 discipline-related prosecutions. Attorneys shall be assigned to
9 work closely with each major intake and investigatory unit of the
10 boards, to assist in the evaluation and screening of complaints
11 from receipt through disposition and to assist in developing
12 uniform standards and procedures for the handling of complaints
13 and investigations.

14 A deputy attorney general of the Health Quality Enforcement
15 Section shall frequently be available on location at each of the
16 working offices at the major investigation centers of the boards,
17 to provide consultation and related services and engage in case
18 review with the boards' investigative, medical advisory, and
19 intake staff. The Senior Assistant Attorney General and deputy
20 attorneys general working at his or her direction shall consult as
21 appropriate with the investigators of the boards, medical
22 advisors, and executive staff in the investigation and prosecution
23 of disciplinary cases.

24 (c) The Senior Assistant Attorney General or his or her deputy
25 attorneys general shall assist the boards, division, or allied health
26 committees, including the Board of Podiatric Medicine, in
27 designing and providing initial and in-service training programs
28 for staff of the division, boards, or allied health committees,
29 including, but not limited to, information collection and
30 investigation.

31 (d) The determination to bring a disciplinary proceeding
32 against a licensee of the division or the boards shall be made by
33 the executive officer of the division, the board, or allied health
34 committee, including the Board of Podiatric Medicine, or the
35 Board of Psychology, as appropriate in consultation with the
36 senior assistant.

37 (e) This section shall become operative July 1, 2008.

38 *SEC. 28. Section 12529.6 is added to the Government Code,*
39 *to read:*

1 12529.6. (a) *The Legislature finds and declares that the*
2 *Medical Board of California, by ensuring the quality and safety*
3 *of medical care, performs one of the most critical functions of*
4 *state government. Because of the critical importance of the*
5 *board's public health and safety function, the complexity of cases*
6 *involving alleged misconduct by physicians and surgeons, and*
7 *the evidentiary burden in the board's disciplinary cases, the*
8 *Legislature finds and declares that using a vertical prosecution*
9 *model for those investigations is in the best interests of the*
10 *people of California.*

11 (b) *Notwithstanding any other provision of law, as of January*
12 *1, 2006, each complaint that is referred to a district office of the*
13 *board for investigation, shall be simultaneously and jointly*
14 *assigned to an investigator and to the deputy attorney general in*
15 *the Health Quality Enforcement Section responsible for*
16 *prosecuting the case if the investigation results in the filing of an*
17 *accusation. The joint assignment of the investigator and the*
18 *deputy attorney general shall exist for the duration of the*
19 *disciplinary matter. During the assignment, the investigator so*
20 *assigned shall, under the direction of the deputy attorney*
21 *general, be responsible for obtaining the evidence required to*
22 *permit the Attorney General to advise the board on legal matters*
23 *such as whether the board should file a formal accusation,*
24 *dismiss the complaint for a lack of evidence required to meet the*
25 *applicable burden of proof, or take other appropriate legal*
26 *action.*

27 (c) *The Medical Board of California, the Department of*
28 *Consumer Affairs, and the Office of the Attorney General shall, if*
29 *necessary, enter into an inter-agency agreement to implement*
30 *this section.*

31 (d) *This section does not effect the requirements of section*
32 *12529.5 as applied to the Medical Board of California where*
33 *complaints that have not been assigned to a field office for*
34 *investigation are concerned.*

35 (e) *This section shall become inoperative on July 1, 2008, and,*
36 *as of January 1, 2009, is repealed, unless a later enacted statute,*
37 *that is enacted before January 1, 2009, deletes or extends the*
38 *dates on which it becomes inoperative and is repealed.*

39 SEC. 29 *Section 12529.7 is added to the Government Code,*
40 *to read:*

1 12529.7. *By July 1, 2007, the Medical Board of California, in*
2 *consultation with the Department of Justice, the Department of*
3 *Consumer Affairs, the Department of Finance, and the*
4 *Department of Personnel Administration, shall report and make*
5 *recommendations to the Governor and the Legislature on the*
6 *vertical prosecution model created under Section 12529.6.*

7 ~~SEC. 27.~~

8 SEC. 30. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.